



Alcoholic Beverage Control

SERVICE

Industry

Since the repeal of Prohibition on December 5, 1933, the federal government and state and local governments have enacted a wide variety of statutes, rules and regulations affecting the production, distribution, sale and consumption of alcoholic beverages. Many of these laws overlap and are inconsistent, making compliance difficult.

We have a wealth of experience in alcoholic beverage control from drafting statutes and regulations to representing our clients in significant brand distribution cases. We routinely help our clients in the wine, beer and distilled spirits industries, counseling them on business and tax issues and, when needed, representing them in court or before regulatory agencies. When existing laws need changing, we help our clients seek regulatory relief or remedial legislation.

Our Alcoholic Beverage Control Industry Service Group includes attorneys practicing in the areas of franchise law and distributor termination, corporate law, mergers and acquisitions, government relations, intellectual property, income, state and location taxation and real property. We have experience working with clients in each of the three tiers of alcoholic beverage control laws.

We assist clients with the following types of matters related to alcoholic beverage control.

- **Distributor Termination Litigation and State ABC Franchise Laws**

We represent numerous suppliers in disputes relating to termination of distribution and sub-distribution agreements, brand disputes and dual designation of territories for wine and beer under state franchise laws. We have particular knowledge and experience in representing wineries and wine wholesalers in disputes arising under the Virginia Wine Franchise Act and the North Carolina Wine Distribution Agreements Act and in representing breweries, suppliers and beer wholesalers in disputes under the Virginia Beer Franchise Act and the North Carolina Beer Franchise Law. Our representation has included brand disputes, determination of primary areas of responsibility, termination, cancellations or non-renewals of agreements and unilateral modification of agreements or relationships. We have also represented suppliers and distributors in antitrust actions and claims involving unfair and deceptive trade practices. We have good working relationships with top administrators of, and have represented clients before, both the North Carolina Alcoholic Beverage Control Commission (North Carolina ABC) and the Virginia Department of Alcoholic Beverage Control (Virginia ABC).

- **Defense of Suppliers in ABC Trade Practices Investigations**

We have acted as counsel of record for industry members in the three-tier system in investigations by regulatory agencies such as the North Carolina Alcohol Law

Enforcement Agency (North Carolina ALE), the North Carolina ABC, the TTB and the Federal Bureau of Investigation regarding industry members' activities with local ABC Boards.

- **Federal and State Regulatory Proceedings**

Suppliers, importers, breweries, including craft breweries, wineries, distilleries, cideries, sake breweries and meaderies look to us for regulatory advice. We advise clients on general taxation, licensure and regulatory matters for brewery and winery facilities and related operations with appropriate federal (Alcohol and Tobacco Tax and Trade Bureau, TTB) and state (ABC) authorities and agencies. And we counsel on compliance, excise tax, licensing and business issues that arise under federal statutes and the regulations of the TTB.

- **Permitting, Licensure and Regulatory Compliance**

Statutory and administrative laws and regulations governing alcoholic beverage control in Virginia and North Carolina can be over-generalized, too specific or outright antiquated, and sometimes do not squarely mesh with federal laws and regulations. In a fast-evolving industry, manufacturers, wholesalers and retailers are exposed to significant levels of risk when making day-to-day business decisions. Whether obtaining a license for the first time or exploring new business concepts, our knowledgeable and experienced practice team members help clients spend more time building their businesses and less time tied-up in regulatory compliance. Our experience includes assisting with federal and state ABC permits for commercial and retail permittees, including manufacturer, growler fill stations, special one-time permits, special events, beer and wine tastings, exemption requests, labeling, Certificate of Label Approvals, package approvals, brand designations, advertising, cooperative advertising and collaborations.

- **Exemption Requests and Tied House/Exclusive Outlets Statutes**

We have provided advice on a number of exemption requests to tied house and exclusive outlet statutes before the state ABC Commissions.

- **Festivals, Entertainment Events and Management Contracts**

We have handled licensure matters for restaurants, music venues and other alcoholic beverage outlets, including public events, beer festivals, music festivals, food truck rodeos and other events. Our work includes drafting event management and vendor contracts, working with state and local officials on event management and advising on other issues including liability insurance. We also counsel clients on distribution of promotional materials (coupons, branded materials, incentives, samples, etc.) at these events, so that the activity is compliant.

- **ABC Permit Suspensions**

We have advised clients on Virginia and North Carolina ABC and North Carolina ALE permit suspensions and citations, as well as negotiated Offers in Compromise and other resolutions for clients.

- **Government Relations**

When a law becomes a barrier to business, a powerful tool can be a legislative effort to change the law. Our government relations advocates have been involved in the drafting legislation in both Virginia and North Carolina, using their knowledge of the legislative and regulatory process to advocate our clients' interests before the Virginia and the North Carolina General Assemblies. We regularly represent industry members on matters regarding the North Carolina Beer Franchise Law and the Wine Distribution Agreements Act.

-

Corporate Entity Formation, Structure and Employment Issues

We have assisted several beer, wine, cider and distilled spirits manufacturers with entering the alcoholic beverage industries in Virginia and North Carolina by helping them determine the proper entity structure from both a tax and business standpoint, seeking to reduce liability and maximize after-tax returns. In addition, we assist in equity raising and structuring long-term and short-term debt for our clients. We prepare employment agreements, non-competition agreements and qualified and non-qualified benefit plans to help our clients attract and maintain key employees. We also prepare operating agreements and buy-sell agreements with a view toward an optimal exit strategy, whether for a small start-up entity or a well-financed mature enterprise.

- **Purchase and Sale Transactions**

We have negotiated, documented and closed numerous sales, mergers, acquisitions and dispositions of distributors, suppliers and businesses with retail sale and manufacturing licenses for alcoholic beverage products. Our work includes negotiating ground and equipment leases, fundraising, all levels of taxation and antitrust advice, including Hart-Scott-Rodino Improvements Act compliance.

- **ABC Advertising Regulations**

We help our clients comply with Virginia and North Carolina ABC advertising laws and help them navigate prohibitions relating to bottle labeling, growler labeling, sweepstakes, promotions, contests, point of sale, coupons, rebates, incentives, tap takeovers and other activities undertaken by industry members and retailers.

- **Distribution Agreements**

We have drafted and negotiated wine and beer distribution and sub-distribution arrangements and terminations in North Carolina, Virginia, South Carolina, Washington, D.C. and Maryland.

- **Contract Brewing Arrangements**

We have drafted and negotiated contract brewing arrangements between licensed brewery facilities and have advised on related licensure and regulatory matters.

- **Intellectual Property**

We have assisted breweries, wineries, cideries and distributors with the registration and protection of trademarks, service marks and domain names for labels, logos, business names and product brands; trade secrets related to formulas, recipes and processes; and copyrights for labels, merchandise, tap handles, advertisements, websites, graphics and other content. We have also assisted industry clients with the preparation and negotiation of licensing, merchandise, sponsorship and distribution agreements; the review of advertising, web site and privacy policies and litigation related to intellectual property infringement, domain name abuse, fraud, false advertising, trademark oppositions and breach of licensing and other agreements.

- **Local Land Use and Zoning**

We have experience assisting the owners and operators of brewery and winery facilities with a wide range of land use and zoning matters, including special use permits, rezoning approvals, site plans and other issues that increasingly are subject to local government regulation, such as licenses and exemptions, tax matters, local inspections, noise violations and general regulatory compliance. We recognize that special events and other non-agricultural uses often are a critical element in sustaining a thriving business in this industry, so we follow closely evolving state legislation affecting farm wineries, farm breweries, cideries and others. We advocate for the industry before local governments as they revise

their zoning and other ordinances to meet state mandates to help ensure that opportunities to carry out such events are encouraged and not over-regulated.

- **Tax**

We provide assistance with federal and state excise tax issues, including compliance matters, dispute appeals and guidance during the audit process. Ensuring that the correct amount of tax is paid on each product is essential to avoiding costly audit findings. When questions arise, we can prepare requests for private letter rulings on which clients can rely in the event of an audit.

Stay updated on current ABC regulatory and legislative news on our [blog](#).

Related News

- Growler Sales Now Permitted in North Carolina
- Proposed Legislation to Expand Growler Sales in North Carolina
- North Carolina ABC Legislative Wrap-Up 2014
- Williams Mullen ABC practice featured in Richmond BizSense
- Aviator Brewing Company Asks Court to Declare: MAD BEACH Beer Label Does Not Infringe California Brewery's Beer Label
- NC Bills To Allow Direct Sales by Distilleries and Expansion of Liquor Products to Festivals and Trade Shows
- Contract Brewing, Powdered Alcohol, Distillery Sales and More ? What Does the N.C. Legislature Have in Store?
- NC ABC Law Changes, How Will This Impact Your Business?
- North Carolina ABC Omnibus Legislation ? House Bill 500
- Other North Carolina Alcohol Bills
- Economic and Job Growth for NC Distilleries ? House Bill 460 / Senate Bill 155
- Carolina Journal Quotes Recent ABC Law Blog Post On Tax Changes in Article on North Carolina Craft Alcohol Producers
- Former Virginia Delegate Dave Albo Officially Joins Williams Mullen
- Gene Chianelli and Jennifer Morgan: Tax Reform Act Lowering Hospitality Industry's Alcohol Costs
- Tax Reform Act Lowers Hospitality Industry's Alcohol Costs
- Jennifer Morgan Named to Triangle Business Journal's 2018 "40 Under 40" List
- Williams Mullen Adds Three Attorneys from Smith Moore Leatherwood
- Keith Kapp Profiled in Business North Carolina's 2019 Legal Elite Issue

Related Events

- Craft Beer and its Intersection with Intellectual Property
- Financing Risk Assessment - NC Craft Brewers Guild
- Winery Law 2.0
- Creative and Legal Ways Your Brewery Can Make More Money
- ABC Town Hall - North Carolina Restaurant and Lodging Association
- Winery, Brewery and Distillery Law in North Carolina
- Winery and Vineyard Law

Related Attorneys

- Hon. David B. Albo – 703.760.5210 – dalbo@williamsmullen.com
- Thomas F. Bergert – 434.951.5710 – tbergert@williamsmullen.com
- Stephen W. Burke – 757.473.5332 – sburke@williamsmullen.com
- Patrick A. Cushing – 804.420.6541 – pcushing@williamsmullen.com
- Amber R. Duncan – 919.981.4014 – aduncan@williamsmullen.com
- Philip H. Goodpasture – 804.420.6904 – pgoodpasture@williamsmullen.com
- A. Brooks Hock – 804.420.6429 – bhock@williamsmullen.com
- M. Keith Kapp – 919.981.4024 – kkapp@williamsmullen.com
- Jennifer A. Morgan – 919.981.4051 – jmorgan@williamsmullen.com
- William L. Nusbaum – 757.629.0612 – wnusbaum@williamsmullen.com
- Ramona C. "Mona" O'Bryant – 919.981.4091 – robryant@williamsmullen.com
- Amy G. Pruett – 757.473.5393 – apruett@williamsmullen.com
- Andrew R. "Drew" Shores – 919.981.4015 – ashores@williamsmullen.com
- Robert Van Arnam – 919.981.4055 – rvanarnam@williamsmullen.com
- Anne C. "Annie" Warren – 919.981.4017 – awarren@williamsmullen.com
- Edward T. White – 804.420.6338 – ewhite@williamsmullen.com